

**Memorandum of Decision: 01-20170086R**  
**Indiana Individual Income Tax**  
**For the 2011 Tax Year**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

### HOLDING

Individuals demonstrated that they were not full-year Indiana residents for 2011 because they effectively changed their domicile from Indiana to Georgia prior to 2011 and they did not spend more than 183 days in Indiana although they continued owning and renting their house in Indiana. Individuals were required to file an Indiana return reporting their rental income (or loss) because that rental income was Indiana source income subject to Indiana income tax.

### ISSUE

#### **I. Indiana Individual Income Tax - Residency.**

**Authority:** IC § 6-1.1-12-37; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Miller Brewing Co. v. Indiana Dep't of State Revenue, 903 N.E.2d 64 (Ind. 2009); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-22.5](#); [45 IAC 3.1-1-23](#); [50 IAC 24-2-5](#).

Taxpayers protest the Department's refund denial of individual income tax for the 2011 tax year.

### STATEMENT OF FACTS

Taxpayers (Husband and Wife) are individuals who own an Indiana home and claim the Indiana homestead credit on their home since 2005. In late 2010, Taxpayers relocated to Georgia due to Husband's employment.

The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the 2011 year and that they did not file the 2011 Indiana income tax return reporting their Indiana income tax. Various notices, including a proposed assessment, were sent to Taxpayers but Taxpayers did not timely respond to these notices. The assessment eventually advanced to a warrant collection stage. The Department eventually collected from Taxpayers in 2016. After the levy, Taxpayers filed a 2011 Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return, IT-40PNR form ("IN PNR"), claiming that they were entitled to a refund. Upon review, the Department made various adjustments, which reduced the amount of Taxpayers' refund.

Taxpayers protested the Department's partial refund denial, claiming that the Department erroneously reclassified Taxpayers as Indiana residents for 2011. An administrative hearing was held during which Taxpayers explained the basis of the protest. During the hearing, Taxpayers acknowledged that the collection costs were not refundable in the absence of the Department's error. The Department followed statutory procedures each step of the way and the collection agency retained a portion of the money as a result of completing its collection effort. This Memorandum of Decision ensues and addresses Taxpayers' protest. Additional facts will be provided as necessary.

#### **I. Indiana Individual Income Tax - Residency.**

### DISCUSSION

Upon reviewing Taxpayers' 2011 IN PNR and publicly verifiable information, the Department determined that Taxpayers were Indiana full-year residents for the 2011 tax year. The Department explained that the Indiana homestead credit was claimed on Taxpayers' Indiana home. Husband's 2011 W2 was mailed to an address in

Indiana. Thus, the Department made adjustments to treat as full-year residents, which reduced Taxpayers' refund.

Taxpayers disagreed, claiming that they moved to Georgia in late 2010 and thus they were Georgia residents, not Indiana residents, for 2011.

In this instance, Taxpayers' refund claim stemmed from the Department's initial proposed assessment. As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

[45 IAC 3.1-1-23](#) explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

(2) Taxpayer Moving from Indiana

Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

. . .

(4) Part-Time Resident Individuals

Persons residing in Indiana but living part of the year in other states or countries will be deemed residents of Indiana unless it can be shown that the abode in the other state or country is of a permanent nature. Domicile is not changed by removal therefrom for a definite period or for a particular purpose. A domicile, once obtained, continues until a new one is acquired . . . .

Recently, the Department revised the Adjusted Gross Income Tax regulations. Some of the revisions intended to clarify the definition of a person's domicile for Indiana income tax purposes and afford more considerations in determining a person's domicile. This Decision thus applies the new regulations accordingly.

[45 IAC 3.1-1-22](#) (2017) states as follows:

(a) "Domicile" means a person's domicile is the state or other place in which a person intends to reside permanently or indefinitely and to return to whenever he or she leaves the place. **A person has only one (1) domicile at a given time even though that person may be statutorily a resident of more than one (1) state.** A person is domiciled in Indiana if he or she intends to reside in Indiana permanently or indefinitely and to return to Indiana whenever he or she leaves the state.

(b) A person is domiciled in a state or other place until such time as he or she voluntarily takes affirmative

action to become domiciled in another place. **Once a person is domiciled in Indiana, that status is retained until such time as he or she voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile by relinquishing the rights and privileges of residency in Indiana.**

(c) In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a permanent place of residence at that place. **The intent to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**

(d) There is no one (1) set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the totality of facts, supported by objective evidence, in each individual case.

**(Emphasis added).**

[45 IAC 3.1-1-22.5](#) (2017) further outlines the factors in determining a person's domicile, as follows:

(a) The Department may require documentation from a person to evaluate domicile.

(b) The one hundred eighty-three (183) day and permanent place of residence threshold in IC [§] 6-3-1-12(b) and [\[45 IAC 3.1-1-21\]](#) is not a test for domicile.

(c) **A person is presumed not to have abandoned their state of domicile and established a new state or other place of domicile in a given year if, during that year, the person maintained a permanent place of residence (whether as an owner, renter, or other occupier of the residence) in that state and the person did more than one of the following:**

- (1) **Claimed a homestead credit or exemption** or a military tax exemption on a home in that state;
- (2) Voted in that state;
- (3) Occupied a permanent place of residence in that state or other place of domicile for more days of the taxable year than in any other single state;
- (4) Claimed a benefit on the federal income tax return based upon that state being the principal place of residence; or
- (5) **Had a place of employment** or business in that state.

**A person may rebut this presumption through the presentation of substantial contrary evidence.**

(d) If a person's domicile is not resolved by subsection (c), the Department may consider additional relevant factors to determine the person's state or other place of domicile, including the state or other place where the person:

- (1) Maintained a driver's license or government issued identification card;
- (2) Was registered to vote;
- (3) Registered a vehicle;
- (4) Claimed as dependents immediate family members who relied, in whole or in part, on the taxpayer for their support;
- (5) Assigned or maintained a mailing address;
- (6) Maintained bank accounts;
- (7) Maintained active membership in a religious, social, cultural or professional organization;
- (8) Received professional services; and
- (9) Kept valuables or family heirlooms.

This list of additional, relevant factors is not exclusive.

**(Emphasis added).**

Indiana law further defines "[h]omestead" as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns . . ." IC § 6-1.1-12-37(a)(2). "'Principal place of residence' means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against

taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

Thus, a new domicile is not necessarily created when an individual moves to a place outside of Indiana. Instead, the individual must move to the new location and have an intent to remain there indefinitely.

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. Mr. Walton lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, Mr. Walton did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

*Id.* (Internal citations omitted)(**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

**"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."**

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

*Id.* (Internal citations omitted)(**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**"

A person who leaves his places of residence temporarily, but with the intention of returning, has not lost his original residence . . . .

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent,

which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.**

Id. at 1317-18 (**Emphasis added**).

Taxpayers, in this instance, contended that in late 2010, they relocated to Georgia due to a change of Husband's employment. Taxpayers asserted that they "were full year residents of the state of Georgia for 2011 and all other income pertained to that state." Taxpayers stated that "[t]he only source of income [from Indiana] was from a rental property as listed and expenses for that rental put the income at a loss for 2011."

Taxpayers here were Indiana residents since 2005 and domiciled in Indiana before they decided to move away. Thus, to determine whether Taxpayers were Indiana residents for 2011, the Department must first determine whether Taxpayers effectively changed their domicile to Georgia before 2011.

As mentioned earlier, "[a] person has only one (1) domicile at a given time even though that person may be statutorily a resident of more than one (1) state. . . ." [45 IAC 3.1-1-22\(a\)](#). "Once a person is domiciled in Indiana, that status is retained until such time as he or she voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile by relinquishing the rights and privileges of residency in Indiana." [45 IAC 3.1-1-22\(b\)](#). "To establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a permanent place of residence at that place." [45 IAC 3.1-1-22\(c\)](#). "The intent to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established." In other words, "[t]o effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." Croop, 157 N.E. at 276; see also Bayh, 521 N.E.2d at 1317-18.

In this instance, it is well-established that Taxpayers moved to Indiana in 2002. The publicly verifiable records established that Taxpayers were the owners of their Indiana home since 2005 and claimed the Indiana homestead deduction on their Indiana house. When the homestead deduction was claimed, Taxpayers necessarily affirmed that the Indiana home is their "true, fixed, permanent home to which [they have] the intention of returning after an absence." Otherwise, Taxpayers were required to notify the county that they no longer qualified for the homestead deduction within sixty days after the date of that change. IC § 6-1.1-12-37(f). Additionally, Husband's 2011 W2 seemingly contained a scrivener's error. The W2 listed Husband's mailing address which does not exist. Specifically, the address was a combination of Taxpayers' Georgia street address within a City in Indiana and an Indiana ZIP (postal) code. Without the corrected W2, the Department properly relied upon the publicly verifiable homestead record and the W2 information provided by Taxpayers to adjust Taxpayers' IN PNR because all of their income was presumably taxable to Indiana. Thus, there is a rebuttable presumption that Taxpayers were Indiana residents for the Tax Years at Issue.

Taxpayers offered additional documents, including 2011 federal and Georgia state income tax returns, Husband's W2, utility bills, and their lease of the house they lived in Georgia for 2011, to support their protest that they were not domiciled or resided in Indiana. Taxpayers maintained that, in 2011, they rented their Indiana house, that the Indiana homestead deduction was mistakenly claimed on their Indiana house, that they removed the homestead exemptions and paid back the additional tax, and that he did not spend more than 183 days for 2011. Thus, Taxpayers argued that they were not Indiana residents because they were not domiciled in Indiana nor did they spend more than 183 days in Indiana for 2011.

Upon review, Taxpayers' supporting documentation showed that, in 2011, they rented a house in Georgia and they paid for the utility services they subscribed for the house in Georgia. Publicly verifiable records further showed that Taxpayers registered their vehicles in Georgia and that Husband obtained his professional license in Georgia. Taxpayers further demonstrated that they rented their Indiana house, reporting a loss in their 2011 federal return. Taxpayers further took steps to remove the homestead deduction which was erroneously claimed on their Indiana house and paid back the tax benefits. Thus, the Department is prepared to agree that Taxpayers effectively changed their domicile to Georgia prior to 2011.

As mentioned earlier, Taxpayers may also qualify as Indiana residents if they spent more than 183 days during 2011 in Indiana when they maintained a permanent place of residence in Indiana. IC § 6-3-1-12; [45 IAC 3.1-1-21](#). The fact that Taxpayers rented their Indiana house coupled with Husband's employment information supported Taxpayers' argument that they did not spend more than 183 days in Indiana. Given the totality of the

circumstances, the Department is prepared to agree that for 2011, Taxpayers met their burden to demonstrate that they were not Indiana residents because they changed their domicile to Georgia prior to 2011 and that they did not spend more than 183 days in Indiana even though they still owned a house in Indiana. IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#).

In conclusion "[e]ach assessment and each tax year stands alone." Miller Brewing, 903 N.E.2d at 69. The Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. [45 IAC 3.1-1-22](#)(d). Under Indiana law, mere ownership of Indiana property does not necessarily make that owner an Indiana resident for state income tax purposes. Going forward, however, if similar circumstances arise again for different tax years, Taxpayers will be required to accordingly document their potential residency issues.

Finally, it should be noted that Taxpayers rented their real property in Indiana beginning in 2011. While Taxpayers continue renting their Indiana house to a third party, the income (or loss) they received from that rental property was Indiana source income subject to Indiana income tax. IC § 6-3-2-2(a). Taxpayers are required to file an appropriate return reporting that income (or loss) to Indiana.

### **FINDING**

Taxpayers' protest of the residency issue is sustained. Taxpayers demonstrated that they were not Indiana residents for 2011, that the Department's adjustments to INPNR were not correct, and that they are entitled to an additional refund. Collection costs, however, are not refundable.

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